

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**JAMES ADAMS v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Davidson County  
No. 97-A-277 Cheryl Blackburn, Judge**

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**No. M2007-02898-CCA-R3-PC - Filed November 4, 2008**

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Petitioner, James Adams, appeals the trial court's denial of his petition for post-conviction relief. The State has filed a motion pursuant to Rule 20, Rules of the Court of Criminal Appeals of Tennessee, for this Court to affirm the judgment of the trial court by memorandum opinion. We grant the motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Davidson County Criminal Court  
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

James Adams, pro se.

Robert E. Cooper, Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

Petitioner was found guilty of attempted second degree murder, aggravated burglary, and two counts of aggravated assault by a Davidson County Jury. He received an effective fifty-year sentence in the Department of Correction. This Court affirmed Petitioner's sentences and convictions. See State v. James Albert Adams, No. M1998-0468-CCA-R3-CD, 1999 WL 1179580 (Tenn. Crim. App., Nashville, Dec. 15, 1999), perm. to appeal denied (Tenn. Sept. 25, 2000).

On November 30, 2007, Petitioner filed a *pro se* petition for post-conviction relief. The trial court denied the petition, finding that it was barred by the one-year statute of limitations. Petitioner appeals the trial court's ruling, arguing that he is entitled to post-conviction relief because his sentences were enhanced by the trial judge, rather than a jury, in violation of his Sixth Amendment rights as interpreted in Cunningham v. California, 549 U.S. 270, 127 S.Ct. 856 (2007) and State v. Gomez, 239 S.W.3d 733 (Tenn. 2007).

Pursuant to Tennessee Code Annotated section 40-30-102(a), a person in custody under a sentence of a court of this state must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one year of the date on which the judgment becomes final. The statute emphasizes that “[t]ime is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file such an action and is a condition upon its exercise.” T.C.A. § 40-30-102(a).

Additionally, Tennessee Code Annotated section 40-30-102(b), provides that the trial court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitations unless (1) the claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required; (2) the claim in the petition is based upon new scientific evidence establishing that such petition is actually innocent of the offense or offenses for which the petitioner was convicted; or (3) the claim in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid. T.C.A. § 40-30-102(b).

In the present case, Petitioner filed his post-conviction petition more than seven years after he was convicted. He claims that the limitations period should be tolled because the trial court improperly enhanced his sentences. This claim is based upon the Tennessee Supreme Court's decision in State v. Gomez, 239 S.W.3d 733 (Tenn.2007) and the rulings of the United States Supreme Court in Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856 (2007); Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004); and Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000).

This claim was not raised until after the conclusion of the conviction proceedings, after the petitioner's convictions had become final. This court has held that the holdings of Cunningham, Blakely, and Apprendi are not to be applied retroactively. See, e.g., Billy Merle Meeks v. Ricky J. Bell, No. M2005-00626-CCA-R3-HC, Davidson County (Tenn.Crim.App. Nov. 13, 2007), app. denied (Apr. 7, 2008). This claim is not a cognizable basis for post-conviction relief.

Upon review of this matter, this Court concludes that no error of law requiring a reversal of the judgment of the trial court is apparent on the record.

### CONCLUSION

Accordingly, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE